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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.								
10/688,447	10/17/2003	Cory O. Nykoluk	10759-00160	1563								
7590 Patrick W. Rasche Armstrong Teasdale LLP Suite 2600 One Metropolitan Square St. Louis, MO 63102		10/01/2007	<table border="1"><tr><td colspan="2">EXAMINER</td></tr><tr><td colspan="2">MAI, TRI M</td></tr><tr><td>ART UNIT</td><td>PAPER NUMBER</td></tr><tr><td>3781</td><td></td></tr></table>		EXAMINER		MAI, TRI M		ART UNIT	PAPER NUMBER	3781	
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/688,447

Applicant(s)

NYKOLUK ET AL.

Examiner

Tri M. Mai

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 30-35, 38-50 and 52 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 30-35, 38-50 and 52 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date ____.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- ☐ Notice of Informal Patent Application
- ☐ Other: ____.

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1. Claims 30-35, 38-47, and 51 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 30 and 51 recite the towing handle being pivotable relative to the distal end.

However, the claim fails to provide any structural to enable such functionality.

2. Claims 30, 31, 34, 35, and 38-48 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sadow (5890570) in view of Liang, and further in view of Miyoshi. Sadow teaches a piece of baggage having a set of wheels, a receptacle in Fig. 1 providing an opening in the top of the piece of baggage, an arm portion 20 retractably engaged to the baggage and having an adjustable axial length extending between opposite proximal and distal ends being operatively to the baggage and the distal end positionalbe between an extended position and a retracted position. A towing having a handgrip at 21 and the handle being connected to the distal end as shown in fig. 1. Sadow does not mention the handle being pivot relative to the distal end of the arm portion. Liang teaches that it is known in the art to provide an arm portion having adjustable axial length and a handgrip can pivot relative to the distal end as taught by Liang to provide and alternative handle to enable one to provide the desired length for the handle and to provide an alternative handle for the luggage.

Miyoshi teaches that it is known in the art to alternatively providing a handle with one telescoping portion with handle with a plurality of telescoping portions. Thus, to provide the handle with a plurality of telescoping portions would have been obvious as taught by Miyoshi.

Regarding claim 31, note that the handle is circumferentially arcuate along a center axis corresponding to the axial length.

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Regarding claim 47, it would have been obvious to one of ordinary skill in the art to provide a flushed handle to provide the desired fit for the handle.

3. Claims 32, 33, 48, 49, and 50 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sadow rejection as set forth in paragraph 2, and further in view of Browning. It would have been obvious to one of ordinary skill in the art to provide a non-circular cross section as taught by Browning, see figure 15 to provide the desired cross section for the handle.

4. Claims 30, 31, 34, 35, 37, 42-47, and 52 are rejected under 35 U.S.C. 102(b) as being anticipated by Williams et al. (4538709). Williams teaches a baggage having a set of wheel, a receptacle, retractable arms, a towing handle having a handle grip 20 such a manner that the handgrip can pivot relative to the distal end.

Regarding claim 31, note that the handle is circumferentially arcuate along a center axis corresponding to the axial length.

Regarding claim 52, note that there is a passage through the handle as claimed.

5. Claims 30-35, 38-40, 42-44, 46-50, and 52 are rejected under 35 U.S.C. 103(a) as being unpatentable over Browning in view of Kang (6431563), and further in view of Cheng (6122800). Browning teaches a luggage with a telescoping handle as claimed. Browning does not teach a the towing handle pivotable relative to the distal end. Kang teaches that it is known in the art to provide a pivotable handle as shown in fig. 9. It would have been obvious to one of ordinary skill in the art to provide the handle as taught by Kang to control the luggage easily.

With respect to the receptacle, It would have been obvious to one of ordinary skill in the art to provide the receptacle as taught by Cheng as shown in fig. 1 to provided added safety.

6. Applicant's arguments have been fully considered but they are not persuasive.

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With respect to the 112 rejection, it is noted that as without any structural elements set forth to enable the handle to be pivoted. The claim is incomplete for omitting essential elements, since there is a gap between the arm portion and the handgrip. See MPEP § 2172.01.

Applicant asserts that there is no motivation to provide the handle of Sadow and the handle in Liang. The examiner submits that the handle in teaches one retractable arm portion and this arm portion is not length adjustable. Liang teaches that it is known in the art to provide a handle with an arm portion that can be adjustable by having a plurality of telescoped portions. Thus to provide the arm portion of Lang in Sadow would have been obvious since having a plurality of portions would allow one to provide a longer arm portion instead of limit the handle length to one portion as shown in Sadow. Furthermore, it is noted that numerous luggage cited shown that this is within common sense to substitute one type of luggage with another one such as in Miyoshi where it disclose both embodiment that can be alternatively interchangeable.

With respect to the combination with Brown, the examiner submits that to provide such a cross section of Brown would have been obvious since these are one of numerous cross section one can provide for a retractable luggage. Applicant seems to rely on teaching that one of the teaching in Sadow showing the handle being rotatable thus would make the change of the cross section unattainable. The examiner submits that with the rotatable handle of Liang, one can easily change the shape of the cross section of the arm portion.

With respect to the handle in Williams, applicant asserts that that Williams is silent as how the handle is attached to the distal end of the arm portion to make it rotatable. The examiner submits that the handle of Williams is rotatable. One can look at the cross section and see the pivoting nature of the handle with respect to the distal end, it is noted that the handle is attached

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to tube 50a and frictionally and movably engaged via inner tube 51. There is nothing there to prevent the handle 20 from rotating at the distal end of tube 50a. Furthermore, it is noted that portion 50a can be called the stem of the handle and this is rotatable to the distal end of handle at 50b via the annular portion at 56a.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tri M. Mai whose telephone number is (571)272-4541. The examiner can normally be reached on 7:30am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anthony Stashick can be reached on (571)272-4561. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Tri M. Mai
Primary Examiner
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